

AMENDED IN SENATE SEPTEMBER 15, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1696

Introduced by Assembly Members Bass, Krekorian, and Portantino

February 23, 2007

An act to add and repeal Section 14998.15 of the Government Code, relating to the California Film Commission, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1696, as amended, Bass. California Film Commission: financial assistance: motion picture production.

Existing law establishes the California Film Commission in the Business, Transportation and Housing Agency and requires the commission to work to encourage motion picture and television filming in California, make recommendations to the Legislature, the Governor, the agency, and other state agencies on legislative or administrative actions that may be necessary or helpful to maintain and improve the position of the state's motion picture industry in the national and world markets, and develop and oversee the implementation of a Cooperative Motion Picture Marketing Plan.

This bill would create a financial assistance program, to be administered by the California Film Commission, for the productions of qualified motion pictures, as defined, in California, subject to specified limitations. This bill would require the commission to report to the Legislature, on or before June 1, 2009, and to annually thereafter, on the diversity of the workforce employed by qualified motion pictures.

This bill would also require the Business, Transportation and Housing Agency to report to the Legislature regarding the effectiveness of the grants created by the bill.

The bill would require an applicant to certify under penalty of perjury that he or she is the applicant entitled to claim the financial assistance authorized for the production of a qualified motion picture, thus imposing a state-mandated local program by expanding the scope of an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 14998.15 is added to the Government
- 2 Code, to read:
- 3 14998.15. (a) Beginning on or after January 1, 2008, the
- 4 California Film Commission shall administer a program to provide
- 5 grants to encourage filming motion pictures and commercials
- 6 within California.
- 7 (b) For purposes of this section:
- 8 (1) "Ancillary product" means any article for sale to the public
- 9 that contains a portion of, or any element of, the motion picture.
- 10 (2) "Budget" means an estimate of all expenses paid or incurred
- 11 during the production period of a motion picture. It shall be the
- 12 same budget used by the qualified ~~and~~ production company for all
- 13 qualified motion picture purposes.
- 14 (3) "Clip use" means a use of any portion of a motion picture,
- 15 other than the qualified motion picture, used in the qualified motion
- 16 picture.
- 17 (4) (A) "Employee fringe benefits" means the amount allowable
- 18 as a deduction under this part to the qualified applicant involved
- 19 in the production of the qualified motion picture for any year during
- 20 the production period with respect to any of the following:

1 (i) Employer contributions under any pension, profit-sharing,
2 annuity, or similar plan.

3 (ii) Employer-provided coverage under any accident or health
4 plan for employees.

5 (iii) The employer's cost of life or disability insurance provided
6 to employees.

7 (B) Any amount treated as wages under clause (i) of
8 subparagraph (A) of paragraph (20) shall not be taken into account
9 under this paragraph.

10 (5) "Licensing" means any grant of rights to distribute the
11 qualified motion picture, in whole or in part.

12 (6) "Movie of the week" and "miniseries" both mean a motion
13 picture, produced for initial exploitation on television, which
14 contains a scripted storyline requiring two or more consecutive
15 hours of programming.

16 (7) "New to California" means a television series that has not
17 previously engaged in principal photography in this state, other
18 than for a production that is a pilot or presentation.

19 (8) "New use" means any use of a motion picture in a medium
20 other than the medium for which it was initially created.

21 (9) (A) "Postproduction" means the final activities in a qualified
22 motion picture's production, including editing, foley recording,
23 automatic dialogue replacement, sound editing, scoring and music
24 editing, beginning and end credits, negative cutting, negative
25 processing and duplication, the addition of sound and visual effects,
26 soundmixing, ~~film to tape~~ *film-to-tape* transfers, encoding, and
27 color correction.

28 (B) "Postproduction" does not include the manufacture or
29 shipping of release prints.

30 (10) "Preproduction" means the process of preparation for actual
31 physical production which begins after a qualified motion picture
32 has received a firm agreement of financial commitment, or is
33 greenlit, with, for example, the establishment of a dedicated
34 production office, the hiring of key crew members, and includes,
35 but is not limited to, activities that include location scouting and
36 execution of contracts with vendors of equipment and stage space.

37 (11) "Principal photography" means the phase of production
38 during which the motion picture is actually shot, as distinguished
39 from preproduction and postproduction.

1 (12) “Production accountant” means an employee of the
2 production company whose duties include some or all of the
3 following activities: oversight of production budgets, cost
4 reporting, order management, payment of expenses, and the review
5 of financial reports for accuracy and completeness.

6 (13) “Production company” means a company primarily engaged
7 in qualified production activities that have been approved by the
8 California Film Commission.

9 (14) “Production period” means the period of time in which the
10 preproduction, principal photography, and postproduction occurs
11 until the qualified motion picture is completed, as described in
12 clause (v) of subparagraph (C) of paragraph (18).

13 (15) (A) “Qualified amount” means all of the following:

14 (i) The total amount paid or incurred during the production
15 period for qualified wages with respect to the production of each
16 qualified motion picture.

17 (ii) The total amount paid or incurred during the production
18 period for qualified property.

19 (iii) Amounts paid or incurred for qualified wages and qualified
20 property related to the qualified motion picture for preproduction
21 costs that include set design and construction, props, wardrobe,
22 prosthetics, testing, and location scouting that are paid or incurred.
23 In the case of a television series described in clause (ii) of
24 subparagraph (C) of paragraph (18), the amounts paid or incurred
25 for the items described in this subparagraph shall be ratably
26 allocated amongst the episodes produced in the first season.

27 (B) Notwithstanding subparagraph (A), the term “qualified
28 amount” shall not include any qualified wages paid or incurred
29 for services performed nor any qualified property purchased or
30 leased before January 1, 2008.

31 (16) “Qualified entity” means a personal service corporation as
32 defined in Section 269A(b)(1) of the Internal Revenue Code, a
33 payroll services corporation, or any entity receiving qualified wages
34 with respect to services performed by a qualified individual.

35 (17) (A) “Qualified individual” means any individual who
36 performs services during the production period in an activity related
37 to the production of a qualified motion picture.

38 (B) “Qualified individual” shall not include either of the
39 following:

1 (i) Any individual related to the qualified applicant as described
2 in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal
3 Revenue Code.

4 (ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of
5 the Internal Revenue Code, of the qualified applicant.

6 (18) (A) “Qualified motion picture” means any motion picture
7 that is produced, adapted, or altered for exploitation in, on, or
8 through any medium or by any device, including, but not limited
9 to, a motion picture produced for exploitation in movie theaters,
10 through any form of television, videotapes, videodiscs, DVDs, or
11 any other digital format or on commercial carriers. “Qualified
12 motion picture” shall also include, but shall not be limited to, all
13 adapted versions thereof, whether adapted for exploitation in any
14 language, for any media, or otherwise.

15 (B) (i) “Qualified motion picture” shall not include any motion
16 picture produced for private noncommercial use, such as weddings
17 or graduations, by students made as part of any educational course,
18 or any motion picture produced for industrial purposes.

19 (ii) “Qualified motion picture” shall not include a news program,
20 current events or public events program, talk show, game show,
21 sporting event or activity, awards show, telethon or other
22 production that solicits funds, reality television program, a feature
23 where 80 percent or more of the content consists of
24 computer-generated images, clip-based programming if more than
25 50 percent of the content is comprised of licensed footage,
26 documentaries, variety programs, daytime dramas, strip shows,
27 one-half-hour-~~(air time)~~ *air time* episodic television shows, or any
28 production that falls within the recordkeeping requirements of
29 Section 2257 of Title 18 of the United States Code.

30 (C) To qualify as a “qualified motion picture,” all of the
31 following additional conditions shall be satisfied:

32 (i) The qualified motion picture shall be a feature with a
33 minimum budget of one million dollars (\$1,000,000) and a
34 maximum budget of seventy-five million dollars (\$75,000,000),
35 or a movie of the week or miniseries with a minimum budget of
36 one million dollars (\$1,000,000) and a maximum budget of
37 seventy-five million dollars (\$75,000,000).

38 (ii) A qualified motion picture shall also include a single episode
39 in a single season, not to exceed 22 episodes per season, of a
40 television series new to California with a minimum budget of five

1 hundred thousand dollars (\$500,000) and a maximum budget of
2 one million eight hundred thousand dollars (\$1,800,000) per
3 episode. This clause shall only apply to the first three seasons of
4 a television series that is new to California.

5 (iii) The actual expenses totaled at the completion of the
6 qualified motion picture must fall within the fiscal ranges
7 established in clause (i) or (ii) at the time of application to the
8 California Film Commission.

9 (iv) At least 75 percent of the total days spent in principal
10 photography of a qualified motion picture occur wholly in
11 California.

12 (v) Production of the qualified motion picture is completed
13 within 30 months of the date on which the qualified application
14 was approved by the California Film Commission. For the purposes
15 of this section, a qualified motion picture is “completed” when the
16 process of postproduction has been finished, and a final answer
17 print or broadcast delivery air master of the qualified motion picture
18 is produced.

19 (vi) Principal photography of the qualified motion picture begins
20 within 180 days of the designation of the qualified applicant as a
21 qualified applicant by the California Film Commission.

22 (D) For the purposes of clauses (i) and (ii) of subparagraph (C),
23 the following additional rules apply:

24 (i) In computing the total amounts paid or incurred for the
25 production of a qualified motion picture, all amounts paid or
26 incurred by all persons or entities that share in the costs of the
27 qualified motion picture shall be aggregated.

28 (ii) In the case of a television series, described in clause (ii) of
29 subparagraph (C), each episode shall be treated as a separate
30 qualified motion picture.

31 (E) For purposes of computing the limitations under this
32 paragraph, “wages” means all amounts described in subparagraph
33 (A) of paragraph (20), provided that these amounts are paid for
34 services performed or rendered within this state.

35 (19) (A) “Qualified property” means tangible personal property
36 purchased or leased in California and is used primarily in the
37 production of a qualified motion picture.

38 (B) “Qualified property” shall not include a story, script, or
39 scenario to be used for a qualified motion picture, or the literary,
40 dramatic, or musical material upon which the qualified motion

1 picture is based or may be adapted, or any rights related to the
2 foregoing.

3 (20) (A) “Qualified wages” means all of the following:

4 (i) Any wages reported under Section 13050 of the
5 Unemployment Insurance Code that were paid or incurred by the
6 production company involved in the production of a qualified
7 motion picture with respect to a qualified individual for services
8 performed on the qualified motion picture production within this
9 state.

10 (ii) The portion of any employee fringe benefits paid or incurred
11 by the production company involved in the production of the
12 qualified motion picture that are properly allocable to qualified
13 wage amounts described in clause (i).

14 (iii) Any payments made to a qualified entity for services
15 performed on a qualified motion picture in this state by qualified
16 individuals within the meaning of paragraph (17).

17 (iv) Remuneration paid to an independent contractor, as
18 described in Section 2750.5 of the Labor Code, who is a qualified
19 individual for services performed within this state by that qualified
20 individual.

21 (B) “Qualified wages” shall not include any of the following:

22 (i) Expenses, including wages, for legal or accounting services
23 except production accountants.

24 (ii) Expenses, including wages, in excess of the first twenty-five
25 thousand dollars (\$25,000) paid per person per qualified motion
26 picture for writers, directors, music directors, music composers,
27 music supervisors, producers, and performers, other than
28 background actors with no scripted lines.

29 (iii) Expenses, including wages, related to new use, reuse, clip
30 use, licensing, secondary markets, or residual compensation, or
31 the creation of any ancillary product, including, but not limited to,
32 a soundtrack album, toy, game, trailer, or teaser.

33 (iv) Expenses, including wages, paid or incurred with respect
34 to acquisition, development, turnaround, or any rights thereto.

35 (v) Expenses, including wages, related to financing, overhead,
36 marketing, promotion, or distribution of a qualified motion picture.

37 (21) “Residual compensation” means supplemental
38 compensation paid at the time that a motion picture is exhibited
39 through new use, reuse, clip use, or in secondary markets, as
40 distinguished from payments made during production.

1 (22) “Reuse” means any use of a qualified motion picture in the
2 same medium for which it was created, following the initial use
3 in that medium.

4 (23) “Secondary markets” means media in which a qualified
5 motion picture is exhibited following the initial media in which it
6 is exhibited.

7 (c) No financial assistance shall be allowed pursuant to this
8 section unless the qualified applicant substantiates, by adequate
9 books and records or by sufficient evidence corroborating his or
10 her own statement, that:

11 (1) The qualified wages and the qualified property on which
12 the financial assistance was calculated were actually paid or
13 incurred in the amount claimed. Substantiation of this item shall
14 include proof that the services were performed in California and
15 the qualified property was purchased or leased in California.

16 (2) The motion picture was a qualified motion picture.
17 Substantiation of this item shall include, but is not limited to, the
18 following:

19 (A) Identification of each qualified individual.

20 (B) The specific start and end dates of production.

21 (C) The total wages paid and amount and type of qualified
22 property purchased.

23 (D) The amount of qualified wages paid to each qualified
24 individual.

25 (E) Certification from the Director of the California Film
26 Commission that identifies the motion picture as a qualified motion
27 picture.

28 (d) If the program participant fails to attach the certification
29 issued by the California Film Commission in accordance with
30 subdivision (e), the financial assistance provided shall be
31 disallowed and assessed and collected.

32 (e) For purposes of this section, the Director of the California
33 Film Commission shall do all of the following:

34 (1) With respect to the reservation and allocation of financial
35 assistance:

36 (A) Reserve allocations of financial assistance for applicants.

37 (B) Establish a procedure for program applicants to file with
38 the California Film Commission a written application, on a form
39 prescribed by the California Film Commission. The application

1 shall be filed under penalty of perjury and include, but not be
2 limited to, the following information:

- 3 (i) The budget for the motion picture production.
- 4 (ii) A one-line shooting schedule.
- 5 (iii) A financing plan for the production.
- 6 (iv) The copyright registration number for the screenplay, as
7 reflected on the certificate of registration issued under the authority
8 of Section 410 of Title 17 of the United States Code, relating to
9 registration of claim and issuance of certificate.
- 10 (v) The diversity of the workforce employed by the qualified
11 applicant, including, but not limited to, the ethnic and racial
12 makeup of the individuals employed by the qualified applicant
13 during the production of the qualified motion picture, to the extent
14 possible.
- 15 (vi) Any other information deemed relevant by the California
16 Film Commission.

17 (C) Determine and designate who is a qualified applicant
18 meeting the requirements of this section.

19 (D) Process and approve, or reject, all applications on a
20 first-come-first-served basis.

21 (E) Provide for the cancellation of the reservation of financial
22 assistance, if principal photography on the qualified motion picture
23 does not begin within 180 days after notification of the reservation
24 of allocated financial assistance by the California Film
25 Commission, in accordance with subdivision (f).

26 (2) With respect to the certification of financial assistance:

27 (A) Certify financial assistance allowed to program applicants
28 with an existing and noncanceled reservation of financial
29 assistance.

30 (B) Establish specific audit requirements, in addition to those
31 provided under current law, that must be complied with prior to
32 the issuance of a certificate by the California Film Commission,
33 and provide for the reallocation of previously reserved allocations
34 of financial assistance, in accordance with subdivision (f), that are
35 disallowed pursuant to the audit requirements.

36 (C) Issue a certificate to the qualified applicant setting forth the
37 name of the qualified applicant, identification of the qualified
38 motion picture, and the total amount of the financial assistance
39 allocated.

(D) Establish an appeals procedure with the California Film Commission regarding the amount of the certified financial assistance allowed.

(3) No later than March 1, 2008, the California Film Commission shall promulgate rules and regulations necessary to establish procedures, processes, requirements, and rules identified in or required to implement this section. Rules and regulations may be adopted on an emergency basis if necessary to meet the March 1, 2008, deadline. The California Film Commission may amend these rules and regulations as necessary. The California Film Commission may adopt rules and regulations to more narrowly define the terms listed in subdivision (b) to limit their meaning, but may not expand the definition of any terms defined in subdivision (b).

~~(f) The aggregate amount of financial assistance that may be allocated, upon appropriation by the Legislature, in any calendar year pursuant to this section shall be an amount equal to the sum of all of the following:~~

~~(1) _____ dollars (\$_____) for each calendar quarter, and each calendar quarter thereafter.~~

~~(2) The unused financial assistance, if any, for the preceding calendar quarter.~~

~~(3) The amount of previously allocated financial assistance canceled or disallowed in the preceding calendar quarter by reason of subparagraph (E) of paragraph (1) or subparagraph (B) of paragraph (2) of subdivision (e).~~

(f) Up to 25 percent of any amount appropriated by the Legislature may be allocated by the film commission for this program for each calendar quarter of the fiscal year. The quarterly allocations may be increased to include:

(1) The unused financial assistance, if any, for the preceding calendar quarter.

(2) The amount of previously allocated financial assistance cancelled or disallowed in the preceding calendar quarter by reason of subparagraph (E) of paragraph (1) or subparagraph (B) of paragraph (2) of subdivision (e).

~~(j)~~

(g) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

1 SEC. 2. The California Film Commission shall report to the
2 Legislature on or before June 1, 2009, and annually thereafter, on
3 the diversity of the workforce employed for a qualified motion
4 picture by the qualified applicants that received financial assistance
5 under Section 14998.15 of the Government Code. The report shall
6 include, but shall not be limited to, information regarding the ethnic
7 and racial makeup of the workforce, as provided by the qualified
8 applicants.

9 SEC. 3. (a) On or before December 31, 2011, the Business,
10 Transportation and Housing Agency shall report to the Legislature
11 on the economic impact of the financial assistance program created
12 by this act. In preparing the report, the agency shall consider, but
13 is not limited to considering, all of the following:

14 (1) The number and increase or decrease of qualified motion
15 pictures produced in California.

16 (2) The amount of total qualified wages paid or incurred in
17 California.

18 (3) The level of employment in the production industry in
19 California.

20 (4) The demographics and geographic distribution of the
21 workforce involved in productions that benefit from the tax
22 incentives created by this act.

23 (b) The agency may consult with the Employment Development
24 Department, representatives of industry, and labor organizations.

25 SEC. 4. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.

34 SEC. 5. *This act is an urgency statute necessary for the*
35 *immediate preservation of the public peace, health, or safety within*
36 *the meaning of Article IV of the Constitution and shall go into*
37 *immediate effect. The facts constituting the necessity are:*

1 *In order to provide immediate and essential stimulation to the*
2 *economy of the state, it is necessary that this act take effect*
3 *immediately.*

O